

XO Communications, Inc.

11111 Sunset Hills Road
Reston, VA 20190
USA

XO

XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

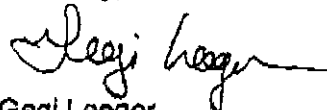
The main company contact for these negotiations is:

Gegi Leeger
Director Regulatory Contracts
11111 Sunset Hills Road
Reston, VA 20190
703-547-2109 voice
703-547-2300 facsimile
Email: gegi.leeger@xo.com

Please initiate the internal processes within SBC that will facilitate this request, and respond to this letter as expeditiously as possible with written acknowledgement of your receipt so that we may begin the negotiation process.

Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised interconnection agreement, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and verified. Accordingly, XO hereby requests that SBC provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators by end office for each end office that SBC claims fall within each tier as those tiers are defined in the *Triennial Review Remand Order*. This data should be provided by no later than Friday, February 25, 2005.

Sincerely,



Gegi Leeger
Director Regulatory Contracts

XO Communications, Inc.

11111 Sunset Mills Road
Reston, VA 20190
USA

February 18, 2005

VIA OVERNIGHT MAILSBC Contract Administration
ATTN: Notices Manager
311 S. Akard, 9th Floor
Four Bell Plaza
Dallas, TX 75202-5398

On February 4, 2005, the Federal Communications Commission ("FCC") released the text of its Order on Remand in *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 ("*Triennial Review Remand Order*"). The rules adopted in the *Triennial Review Remand Order* constitute a change in law under the current interconnection agreement ("ICA") between XO¹ and Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC"). Pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of that ICA, formal written notice is required to begin the process of entering into negotiations to arrive at an amendment to implement into the ICA the FCC's determinations in the *Triennial Review Remand Order*.

Accordingly, we hereby provide this notice, and request that SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. In addition, formal notice is hereby being given for purposes of again commencing negotiations on the changes in law implemented by the *Triennial Review Order* that were unaffected by the *Triennial Review Remand Order*.² We intend that the negotiations will include the effect of section 271 of the 1996 Telecom Act on SBC's ongoing obligation to provide access to certain unbundled network elements, as well as independent state authority to order unbundling.

¹ "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to XO Missouri, Inc.

² The inclusion of changes in law implemented by the *Triennial Review Order* in this request should not be construed as a waiver of any right XO may have, and XO hereby reserves all such rights, to seek immediate relief for SBC's continued refusal, after months of negotiation between the parties, to implement those provisions of the TRO not affected by appeal or vacatur.

XOTM

XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

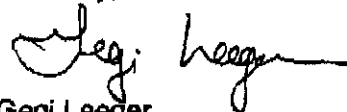
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Accordingly, we hereby provide this notice, and request that SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. In addition, formal notice is hereby being given for purposes of again commencing negotiations on the changes in law implemented by the *Triennial Review Order* that were unaffected by the *Triennial Review Remand Order*.² We intend that the negotiations will include the effect of section 271 of the 1996 Telecom Act on SBC's ongoing obligation to provide access to certain unbundled network elements, as well as independent state authority to order unbundling.

¹ "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to XO Ohio, Inc.

² The inclusion of changes in law implemented by the *Triennial Review Order* in this request should not be construed as a waiver of any right XO may have, and XO hereby reserves all such rights, to seek immediate relief for SBC's continued refusal, after months of negotiation between the parties, to implement those provisions of the TRO not affected by appeal or vacatur.

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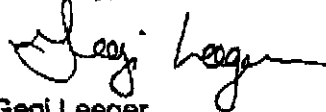
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Accordingly, we hereby provide this notice, and request that SBC begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. In addition, formal notice is hereby being given for purposes of again commencing negotiations on the changes in law implemented by the *Triennial Review Order* that were unaffected by the *Triennial Review Remand Order*.² We intend that the negotiations will include the effect of section 271 of the 1996 Telecom Act on SBC's ongoing obligation to provide access to certain unbundled network elements, as well as independent state authority to order unbundling.

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XO™

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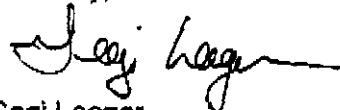
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The XO logo consists of a stylized 'X' and 'O' in a bold, sans-serif font. The 'X' is formed by two thick, slightly curved lines that meet at the center. The 'O' is a simple, thick-lined circle. A small trademark symbol (TM) is located to the bottom right of the 'O'.

XO notes that, pursuant to Section 2.1 of the Second Amendment Superseding Certain Intervening Law, Compensation, Interconnection and Trunking Provisions of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and SBC will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed. Furthermore, as both SBC and XO are parties to Docket No. 28821 - Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement, XO provides notice to SBC that it expects the parties to negotiate implementation of the *Triennial Review Remand Order*, pursuant paragraph 233 of the *Triennial Review Remand Order*, so that the resulting interconnection agreement reflects such *Triennial Review Remand Order*.

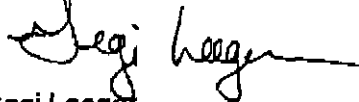
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Sincerely,

A handwritten signature in black ink, appearing to read 'Gegi Leeger', written over a horizontal line.

Gegi Leeger
Director Regulatory Contracts

EXHIBIT D

XO Communications





February 24, 2005

Gegi Leeger
Director Regulatory Contracts
XO Communications
11111 Sunset Hills Road
Reston, VA 20190

Subject: XO Communications February 18, 2005 Letters (19 letters)

Dear Gegi;

This letter is in response to your letters dated February 18, 2005, taking the position that the FCC's February 4, 2005 *TRO Remand Order* constitutes a change in law, and requesting negotiations to conform your existing Interconnection Agreement(s) (ICAs)¹ to the FCC's February 4, 2005 *TRO Remand Order*. Additionally, you request

¹ ICAs specifically addressed in the February 18, 2005 letters received from XO Communications are: "the current interconnection agreement ("ICA") between XO Communications Services, Inc. (XO) on behalf of and/or as a successor in interest to Allegiance Telecom of Illinois, Inc. and Illinois Bell Telephone Company d/b/a/ SBC Illinois ("SBC"); XO on behalf of and/or as a successor in interest to XO Michigan, Inc. and Michigan Bell Telephone Company d/b/a/ SBC Michigan ("SBC"); XO Communications Services, Inc. on behalf of and/or as successor in interest to Allegiance Telecom of Michigan, Inc. and Michigan Bell Telephone Company d/b/a/ SBC Michigan ("SBC"); XO on behalf of and/or as successor in interest to Allegiance Telecom of Missouri, Inc. and Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC"); XO on behalf of and/or as successor in interest to XO Missouri, Inc. and Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC"); XO on behalf of and/or as successor in interest to XO Ohio, Inc. and Ohio Bell Telephone Company d/b/a/ SBC Ohio ("SBC"); XO on behalf of and/or as successor in interest to Allegiance Telecom of Ohio, Inc. and Ohio Bell Telephone Company d/b/a/ SBC Ohio ("SBC"); XO on behalf of and/or as successor in interest to XO Texas, Inc. and Southwestern Bell Telephone d/b/a SBC Texas ("SBC"); XO on behalf of and/or as successor in interest to Allegiance Telecom of Texas, Inc.; and Southwestern Bell Telephone, L.P. d/b/a SBC Texas ("SBC"); XO on behalf of Coast to Coast Telecommunications, Inc. and Michigan Bell Telephone Company d/b/a/ SBC Michigan ("SBC"); XO on behalf of and/or as successor in interest to XO California, Inc. and Pacific Bell Telephone Company d/b/a SBC California ("SBC"); XO on behalf of and/or as successor in interest to Allegiance Telecom of California Inc. and Pacific Bell Telephone Company d/b/a SBC California ("SBC"); XO on behalf of and/or as successor in interest to XO Arkansas, Inc. and Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas ("SBC"); XO on behalf of and/or as successor in interest to XO Connecticut, Inc. and Southern New England Telephone Company d/b/a/ SBC Connecticut ("SBC"); XO on behalf of and/or as successor in interest to XO Illinois, Inc. and Illinois Bell Telephone Company d/b/a SBC Illinois ("SBC"); XO on behalf of and/or as successor in interest to XO Indiana, Inc. and Indiana Bell Telephone Company d/b/a SBC Indiana ("SBC"); XO on behalf of and/or as successor in interest to XO Kansas, Inc. and Southwestern Bell Telephone, L.P. d/b/a SBC Kansas ("SBC"); XO on behalf of and/or as successor in interest to XO Oklahoma, Inc. and Southwestern Bell Telephone, L.P. d/b/a SBC Oklahoma ("SBC"); and XO on behalf of and/or as successor to XO Wisconsin, Inc. and Wisconsin Bell Telephone Company d/b/a SBC Wisconsin ("SBC").



negotiations to conform your ICAs to rules adopted in the *Triennial Review Order* that were unaffected by the *TRO Remand Order*. SBC will address each of the issues raised by your February 18th letter.

First, as you know, on February 11, 2005, SBC advised your company(ies) of SBC's plans to implement the *TRO Remand Order*, via the following four Accessible Letters: CLECALL05-017, CLECALL05-018, CLECALL05-019 and CLECALL05-020. Also on February 11, 2005, SBC announced an interim UNE-P Replacement Commercial Offering via Accessible Letter CLECALL05-016. As stated in Accessible Letters CLECALL05-018 and CLECALL05-020, SBC has already provided you with proposed language to bring your ICA(s) into conformity with the FCC's new unbundling rules, as well as the transition plans and pricing for elements that no longer need be unbundled, which will take effect on March 11, 2005. Signature-ready, printable versions of the amendments are available via the SBC CLEC Website: CLEC Online at <https://clec.sbc.com/clec>. The proposed language was derived directly from the *TRO Remand Order*, and thus should be implemented without delay, consistent with the Commission's admonition that the parties should not unnecessarily delay implementation of the new rules and the parties' obligation to negotiate in good faith. Accordingly, we again request that you immediately access the proposed language on CLEC-Online, print the signature-ready amendment(s), execute and return them to SBC or provide proposed modifications as soon as possible so that we may promptly reach agreement and file amendments with the appropriate state commission(s) in a timely manner.

In your letter, you do not clearly state what other issues you believe you need to negotiate with SBC in the wake of the *TRO Remand Order*. If you have additional written language proposals to make relative to the *TRO Remand Order*, separate and apart from the transition plan and pricing, please forward them to me at your earliest convenience. However, negotiation concerning such proposals should not delay timely implementation of the Commission's new unbundling rules and transition plans, which are covered by SBC's online proposed amendment. In fact, SBC will begin billing the FCC's transition pricing modifications effective March 11, 2005 in order, among other things, to accurately track amounts due from CLECs during the applicable transition periods and to allow CLECs to assess the additional amounts that will be due upon amendment of their ICA(s).

Second, SBC notes that you also have requested negotiations regarding certain rulings made in the FCC's 2003 *Triennial Review Order*. Your request is not appropriate at this time. As you are aware, on October 30, 2003, January 16, 2003 or during negotiations of successor ICAs, SBC notified your company(ies) of the issuance of the *Triennial Review Order*, and requested negotiations to conform your ICA(s) to that Order. Subsequently, on March 11, 2004 and July 13, 2004, or during negotiations of successor ICAs, SBC notified your company(ies) of the issuance of the D.C. Circuit Court of Appeals' *USTA II* decision and provided additional language to conform your ICA(s) to that decision, which vacated several of the key rulings of the *Triennial Review Order*. Notwithstanding these prior notices and amendments proposed by SBC, your company's ICA(s) have not



been conformed to those decisions and are now the subject of formal dispute proceedings in SBC's 13-state territory. Therefore, it would not be appropriate, nor is it necessary, to initiate negotiations at this time. As you are aware, SBC's proposed conforming language for the *Triennial Review Order* has been part of the public record in the state dispute resolution proceedings for months. If your company(ies) are now prepared to incorporate the language necessary to conform your existing ICA to the *Triennial Review Order*, SBC is willing to engage in settlement discussions regarding that language, in hopes that we quickly can come to agreement and dismiss your company(ies) from those proceedings. However, any such settlement discussions would in no way affect the ongoing state dispute resolution proceedings unless the parties are able to reach agreement. If you are interested in incorporating the conclusions of the *Triennial Review Order* and the *TRO Remand Order* into a single amendment, I am attaching sample amendment language for your consideration.

Next, SBC notes that you have requested negotiations regarding unbundling of certain elements under Section 271 of the Act and independent state authority. However, as SBC previously has made clear, we do not believe that states have independent authority to order unbundling of elements for which the FCC has made a finding of no impairment. Moreover, we do not agree that negotiations of amendments to conform your ICAs to the *TRO Remand Order* should encompass negotiation of section 271 elements. Rather, any such negotiations should occur outside the section 251/252 framework. SBC notes, in this regard, that negotiations are not necessarily required to comply with any unbundling requirements under section 271. For example, SBC's special access offerings provide any local loop transmission capability or local transport capability that might be required under section 271.

SBC also rejects your contention that you may continue to purchase network elements that are no longer subject to unbundling after the *TRO Remand Order* is effective on March 11 because "the existing terms of [your] ICA continue in effect until such time as the Parties have executed a written amendment to the ICA." As you know, the *TRO Remand Order*, effective on March 11, 2005, specifically provides that requesting carriers may no longer obtain new Mass Market ULS/UNE-P, DS1/DS3/Dark Fiber Loops, and DS1 and DS3 Transport where there has been a finding of non-impairment and where ILECs thus are not required to provide such elements under the new unbundling rules. The *TRO Remand Order* further establishes transition plans for the embedded base of those items. This should greatly assist your company(ies) in implementing the *TRO Remand Order*. Please note that, notwithstanding your ICA(s), orders received for elements that have been declassified through a finding of non-impairment by the *TRO Remand Order* will not be accepted, beginning March 11, 2005, as clearly outlined in Accessible Letters CLECALL05-017 and CLECALL05-019. The FCC's rules, effective March 11, 2005, provide that CLECs may not obtain such elements beginning on that date, and do not require contract amendments for effectuation. See §51.319(d)(2), §51.319(a)(6)(ii), and §51.319(e)(2)(iv)(B).



Finally, in your February 18th letter you also requested the identification of Tier 1, 2 and 3 information for High-Capacity Loops and Transport as applicable. This information has been posted to CLEC-Online as outlined in CLECALL05-027 and CLECALL05-031. The business line criteria used to determine the tiers is in accordance with ¶105. The fiber-based collocater criteria used to determine the tiers is based on SBC's inventory as described in ¶100 of the *TRO Remand Order*.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, reading "C. Woodard-Sullivan".

Cheryl Woodard-Sullivan
Account Manager

Cc: P. O'Sullivan
L. Cooper

**PROPOSED TRIENNIAL REVIEW ORDER DECLASSIFICATION AND TRO REMAND ORDER
TRANSITIONAL AMENDMENT LANGUAGE**

WHEREAS, the Federal Communications Commission ("FCC") released on August 21, 2003 a "Report and Order on Remand and Further Notice of Proposed Rulemaking" in CC Docket Nos. 01-338, 96-98 and 98-147, 18 FCC Rcd 16978 (as corrected by the Errata, 18 FCC Rcd 19020, and as modified by Order on Reconsideration (rel. August 9, 2004) (the "Triennial Review Order" or "TRO"), which became effective as of October 2, 2003; and

WHEREAS, by its TRO, the FCC ruled that certain network elements were not required to be provided as unbundled network elements under Section 251(c)(3) of the Telecommunications Act of 1996 ("Act"), and therefore, [SBC ILEC] is no longer legally obligated to provide those network elements on an unbundled basis to CLEC under federal law; and

WHEREAS, the U.S. Circuit Court of Appeals, District of Columbia Circuit released its decision in *United States Telecom Ass'n v. F.C.C.*, 359 F3d 554 (D.C. Cir. 2004) ("USTA II") on March 2, 2004 and its associated mandate on June 16, 2004; and

WHEREAS, the USTA II decision vacated certain of the FCC rules and parts of the TRO requiring the provision of certain unbundled network elements under Section 251(c)(3) of the Act; and

WHEREAS, the FCC issued its Order on Remand, including related unbundling rules,¹ on February 4, 2005 ("TRO Remand Order"), holding that an incumbent LEC is not required to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers (CLECs) for the purpose of serving end-user customers using DSO capacity loops ("mass market unbundled local circuit switching" or "Mass Market ULS"), and holding that an incumbent LEC is not required to provide access to certain high-capacity loop and certain dedicated transport on an unbundled basis to requesting telecommunications carriers (CLECs);

NOW, THEREFORE, in consideration of the foregoing, and the promises and mutual agreements set forth in the Agreement and in this Amendment, the Agreement is hereby amended to ensure that the terms and conditions of the Agreement related to specific network elements made available hereunder on an unbundled basis under Sections 251(c)(3) and (d)(2) are conformed so as to be consistent with applicable federal law:

1.1 TRO-Declassified Elements. Pursuant to the TRO, nothing in the Agreement requires [SBC ILEC] to provide to CLEC any of the following items, either alone or in combination (whether new, existing, or pre-existing) with any other element, service or functionality:

- (i) entrance facilities;
- (ii) DSO or OCn level dedicated transport;
- (iii) enterprise market (DS1 and above) local switching (defined as (a) all line-side and trunk-side facilities as defined in the TRO, plus the features, functions, and capabilities of the switch. The features, functions, and capabilities of the switch shall include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, and (b) all vertical features that the switch is capable of providing, including custom calling, custom local area signaling services features, and Centrex, as well as any technically feasible customized routing functions);

¹ Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313; CC Docket No. 01-338, (FCC released Feb. 4, 2005).

- (iv) OCn loops;
- (v) the feeder portion of the loop;
- (vi) line sharing;
- (vii) any call-related database, other than the 911 and E911 databases, to the extent not provided in conjunction with unbundled local switching;
- (viii) SS7 signaling to the extent not provided in conjunction with unbundled local switching;
- (ix) packet switching, including routers and DSLAMs;
- (x) the packetized bandwidth, features, functions, capabilities, electronics and other equipment used to transmit packetized information over hybrid loops (as defined in 47 CFR 51.319 (a)(2)), including without limitation, xDSL-capable line cards installed in digital loop carrier ("DLC") systems or equipment used to provide passive optical networking ("PON") capabilities; and
- (xi) fiber-to-the-home loops and fiber-to-the-curb loops (as defined in 47 C.F.R. § 51.319(a)(3)) ("FTTH Loops" and "FTTC Loops"), except to the extent that [SBC ILEC] has deployed such fiber in parallel to, or in replacement of, an existing copper loop facility and elects to retire the copper loop, in which case [SBC ILEC] will provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the FTTH Loop or FTTC Loop on an unbundled basis to the extent required by terms and conditions in the Agreement.

1.2 TRO Remand-Declassified Elements (Mass Market Unbundled Local Switching and UNE-P)

- 1.2.1 Notwithstanding anything in the Agreement, pursuant to Rule 51.319(d) as set forth in the TRO Remand Order, effective March 11, 2005, CLEC is not permitted to obtain new Mass Market ULS, either alone or in combination (as in with "UNE-P"). Accordingly, pursuant to Rule 51.319(d)(2)(iii), although [SBC ILEC] shall continue to provide access to Mass Market ULS or Mass Market UNE-P to CLEC for CLEC to serve its embedded base of end-user customers (i.e., only Mass Market ULS or Mass Market UNE-P ordered by CLEC before March 11, 2005), the price for such Mass Market ULS and UNE-P shall be the higher of (A) the rate at which CLEC obtained such Mass Market ULS and UNE-P on June 15, 2004 plus one dollar, or (B) the rate the applicable state commission established(s), if any, between June 16, 2004, and March 11, 2005, for such Mass Market ULS and UNE-P, plus one dollar. For purposes of this Paragraph, "Mass Market" shall mean 1 - 23 lines, inclusive (i.e. less than a DS1 or "Enterprise" level.) CLEC shall be fully liable to [SBC ILEC] to pay such pricing under the Agreement, including applicable terms and conditions setting forth penalties for failure to comply with payment terms, notwithstanding anything to the contrary in the Agreement.
- 1.2.2 CLEC will complete the transition of embedded base Mass Market ULS and Mass Market UNE-P to an alternative arrangement by the end of the transition period defined in the TRO Remand Order (i.e. by March 11, 2006).
- 1.2.3 Paragraphs 1.2.1 and 1.2.2, above, apply and are operative regardless of whether CLEC is requesting Mass Market ULS or Mass Market UNE-P under the Agreement or under a state tariff, if applicable, and regardless of whether the state tariff is referenced in the Agreement or not.

1.3 TRO Remand Declassified Elements (High-capacity Loop and Transport)

- 1.3.1 Notwithstanding anything in the Agreement, pursuant to Rule 51.319(a) and Rule 51.319(e) as set forth in the TRO Remand Order, effective March 11, 2005, CLEC is not permitted to obtain the

following new unbundled high-capacity loop and dedicated transport elements, either alone or in combination:

Dark Fiber Loops;

DS1/DS3 Loops in excess of the caps or to any building served by a wire center described in Rule 51.319(a)(4) or 51.319(a)(5), as applicable;

DS1/DS3 Transport in excess of the caps or between any pair of wire centers as described in Rule 51.319(e)(2)(ii) or 51.319(e)(2)(iii), as applicable; or

Dark Fiber Transport, between any pair of wire centers as described in Rule 51.319(e)(2)(iv).

The above-listed element(s) are referred to herein as the "Affected Element(s)."

1.3.2 Accordingly, pursuant to Rules 51.319(a) and (e), although [SBC ILEC] shall continue to provide CLEC's embedded base of the Affected Element(s) (i.e., only Affected Elements ordered by CLEC before March 11, 2005), if and as provided by the Agreement, the price for the embedded base Affected Element(s) shall be the higher of (A) the rate CLEC paid for the Affected Element(s) as of June 15, 2004 plus 15% or (B) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for the Affected Element(s), plus 15%. CLEC shall be fully liable to [SBC ILEC] to pay such pricing under the Agreement, including applicable terms and conditions setting forth penalties for failure to comply with payment terms, notwithstanding anything to the contrary in the Agreement.

1.3.3 CLEC will complete the transition of embedded base Affected Elements to an alternative arrangement by the end of the transition period defined in the TRO Remand Order (12 or 18 months from the TRO Remand Order's effective date, as applicable). For Dark Fiber Affected Elements, CLEC will remove all CLEC services from such Dark Fiber Affected Elements and return the facilities to [SBC ILEC] by the end of the transition period defined in the TRO Remand Order for such Dark Fiber Affected Elements.

1.3.4 Paragraphs 1.3.1 and 1.3.2, above, apply and are operative regardless of whether CLEC is requesting the Affected Element(s) under the Agreement or under a state tariff, if applicable, and regardless of whether the state tariff is referenced in the Agreement or not.

2.1 [INTENTIONALLY LEFT BLANK]

3.1 **Notice and Transition.** In addition to the network elements identified in this Amendment as being no longer subject to unbundling under the Agreement, if the FCC determines that one or more additional network elements are no longer required to be unbundled under Section 251(c)(3), then [SBC ILEC] is not required to provide the element(s) on an unbundled basis, either alone or in combination (whether new, existing, or pre-existing) with any other element, service or functionality, to CLEC under this Agreement, and the following notice and transition procedure shall apply:

3.1.1 [SBC ILEC] will provide written notice to CLEC of the fact that the network element(s) and/or the combination or other arrangement in which the network element(s) had been previously provided on an unbundled basis is no longer required to be provided. During a transitional period of thirty (30) days from the date of such notice, [SBC ILEC] agrees to continue providing such network element(s) under the terms of this Agreement.

3.1.1.1 Upon receipt of such written notice, CLEC will cease new orders for such network element(s) that are identified in the [SBC ILEC] notice letter. [SBC ILEC] reserves the right to monitor, review, and/or reject CLEC orders transmitted to [SBC ILEC] and, to the extent that the CLEC has submitted orders and such orders are provisioned after this 30-day transitional period, such network elements are still subject to this Paragraph 3.1, including the CLEC options set forth in subparagraph 3.1.1.2 below, and [SBC ILEC]'s right of conversion in the event the CLEC options are not accomplished by the end of the 30-day transitional period.

3.1.1.2 During such 30-day transitional period, the following options are available to CLEC with regard to the network element(s) identified in the [SBC ILEC] notice, including the combination or other arrangement in which the network element(s) were previously provided:

(i) CLEC may issue an LSR or ASR, as applicable, to seek disconnection or other discontinuance of the network element(s) and/or the combination or other arrangement in which the element(s) were previously provided; or

(ii) [SBC ILEC] and CLEC may agree upon another service arrangement (e.g. via a separate agreement at market-based rates or resale), or may agree that an analogous resale service or access product or service may be substituted, if available.

Notwithstanding anything to the contrary in the Agreement, including any amendments to the Agreement, at the end of the thirty (30) day transitional period, unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as applicable, under subparagraph 3.1.1.2(i), above, and if CLEC and [SBC ILEC] have failed to reach agreement, under subparagraph 3.1.1.2(ii), above, as to a substitute service arrangement or element, then [SBC ILEC] will convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale or access service or arrangement, if available, at rates applicable to such analogous service or arrangement.

4.1 Nothing in this Amendment shall affect the general application and effectiveness of the Agreement's "change of law," "intervening law," "successor rates" and/or any similarly purposed provisions. The rights and obligations set forth in this Amendment apply in addition to any other rights and obligations that may be created by such intervening law, change in law or other substantively similar provision.